IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2675 of 1997
with
CIVIL APPLICATION No.7872 of 1997

Date of Decision: 17-12-2004

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UNITED INDIA INSURANCE CO LTD
Versus
VALJIBHAI DEVJIBHAI AAYAR

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Coram:
The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K. Rathod, Judge

Whether approved for reporting?

For

MR PV NANAVATI
MR VIBHUTI NANAVATI

For Respondents:

MR SURESH M SHAH
MR MEHUL S SHAH

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal is directed against the order dated 31-05-1997 of Motor Accident Claims Tribunal, Kachchh at

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Whether Reporters of Local Papers may be allowed to see the Judgment?

Bhuj below Exh.19 in Motor Accident Claim Petition No.54 of 1996 passed under Section 163-A of Motor Vehicles Act, 1988 (for short `the Act'). On being pointed out by Shri Nanavati that Claim Petition under Section 166 is pending before the Motor Accident Claims Tribunal, Shri Mehul Shah submits that the Claims Petition be taken to have been withdrawn, and this Appeal be decided on merits. Accordingly, with consent of learned counsel for both the sides, the matter is taken up for final disposal.

2. Accident took place on 14-09-1995 when the claimant was going in Truck No.GTW 4089 as a cleaner. When the Truck stopped near sign board at village Apahdala of Taluka Limadi on National Highway No.8/A, opponent-1 in the employment of opponent-2 came from Sayla side with vehicle No.GJ-3-8133 driving the same rashly and negligently and at excessive speed. He lost control of the vehicle, which dashed against the claimant, who was standing beside his vehicle. Matter was reported to the police. In this accident, the claimant sustained serious injuries in right leg, left leg, waist and other parts of his body. As a result, he had to undergo treatment in various hospitals and underwent pain and suffering. At the time of accident, he was 25 year old, working as cleaner, earning Rs.3,000/- p.m. Because of the disability, he is unable to move, work and earn for his livelihood. Compensation of Rs.9,45,000/- is claimed from the opponents moving application under Section 166 of the Act. Application under Section 163-A of the Act is also filed to recover in all Rs.6,86,000/- on structured formula basis. Insurance Company has denied the accident because of rash and negligent driving of vehicle by opponent-1. It is also alleged that driver, owner and Insurance Company of the vehicle have not been joined party, since they are also responsible for the accident due to contributory negligence. The factum of insurance is denied and when proved, there is breach of essential terms and conditions of the Insurance Policy. Matter was considered by the Claims Tribunal under Section 163-A of the Act, and compensation of Rs.3,24,000/- carrying interest @ 15% from the date of application till payment has been ordered. Against this award, this Appeal is filed by the United India Insurance Company Limited.

3. Counsel for both the sides heard, matter considered. From evidence we find that opponents are responsible for the accident and meet the liability of compensation, which has been worked out in this case by the Claims Tribunal. We find no infirmity so far as taking place of accident and assessment of compensation are concerned. To that extent, assessment and findings by Claims Tribunal is/are confirmed.

4. Last question pertains to rate of interest. Learned Counsel for the appellant submits that the rate of interest be reduced being high. Shri Mehul Shah submits that he has no objection in case rate of interest is reduced to 9%. We find the submission made by Shri Mehul Shah is just and proper in the facts and circumstances of the case.

5. Therefore, Appeal is allowed. The award is modified to the extent that rate of interest would be 9% per annum instead of 15% on the amount of compensation awarded by the Claims Tribunal payable from the date of application till payment. Balance amount of compensation be paid within two months and amount deposited in the Registry of this Court under Section 173 of the Act be transmitted to the Claims Tribunal concerned for payment to the claimants. Civil Application stands disposed of. Interim relief vacated.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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